

**REMARKS/ARGUMENTS**

This Amendment is being filed in response to the Official Action of the Examiner mailed January 12, 2004, setting a three-month shortened statutory period for response ending April 12, 2004. Claims 1-19, 22-23, and 25-34 remain pending. Claims 20-21 and 24 have been canceled without prejudice, and claims 27-34 are newly presented. Reconsideration, examination and allowance of all pending claims are respectfully requested.

On page 2 of the Office Action, the Examiner rejected claims 1-26 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1, 9, 13 and 22, the Examiner states that it is unclear what aspect of the fluid sensor is being compensated. In response, claims 1, 9, 13 and 22 have been amended to further clarify the claims, and are now believed to fully comply with 35 U.S.C. § 112, second paragraph.

With regard to claims 5-8, 5-17 and 23-26, the Examiner questions whether the microbridge structure as discussed on page 4 of applicant's disclosure is critical to the functioning of the invention. The Examiner states that a feature that is taught as being critical to the invention in the specification should be recited in the claims (citing MPEP § 2164.08(c)).

The microbridge structure discussed on page 4 of the present specification is not a critical feature, as the Examiner suggests. Rather, and as noted on page 6, lines 3-4 of the specification, “[t]he microsensor or ‘microbridge’, as it will be referred to herein, though not limiting, is presently preferred for several reasons.” (Emphasis Added). That is, the microbridge structure was preferred on the date of filing, but it was contemplated that other suitable sensors may be

used, as desired. As noted in MPEP § 2164.08(c)): “Features which are merely preferred are not to be considered critical. *In re Goffe*, 542 F.2d 564, 567, 191 USPQ 429, 431 (CCPA 1976)”.

Applicants note that the Examiner did not reject any of the method claims, namely claims 1-4, 9-14, and 18-22, under 35 U.S.C. § 102 or § 103. As such, claims 1-4, 9-14, and 18-22 are now believed to be in condition for allowance.

At the bottom of page 2 of the Office Action, the Examiner rejected claims 5-8, 15-17, and 23-26 under 35 U.S.C. § 102(b) as being anticipated by Bohrer (U.S. Patent No. 4,478,076). Regarding claims 5 and 15, the Examiner states that Bohrer suggests a sensing apparatus comprising: a thin film heater (26); a thin film thermal or temperature sensor (22 & 24) in proximate position to the heater; a semiconductor body (20) with a depression (30) therein; and an energizing means (46) connected to the heater for energizing the heater (citing column 3, line 21 though column 5, line 67).

Regarding claims 5, 6 and 15, the Examiner states that these claims recite various functional limitations, such as how the elevated temperature of the thermal sensor minimizes the effect of water on determining a property of a test fluid. The Examiner states that the Courts have held that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. The Examiner further states that apparatus claims must be structurally distinguishable from the prior art in terms of structure, not function.

While Applicants respectfully disagree that 5, 6 and 15 do not recite sufficient structure, claim 5 has been amended to recite:

5. (Currently Amended) A fluid sensor for determining a selected property of one or more components in a fluid fluids of interest, comprising:  
a heater;

a thermal sensor in proximate position to said heater and in thermal communication therewith through the ~~one or more~~ fluid of interest, said sensor having a temperature dependent output; and

energizing means connected to said heater for energizing the heater to induce an elevated temperature condition in said thermal sensor, ~~wherein said elevated temperature is preselected to minimize the effect of H<sub>2</sub>O;~~

measuring means for obtaining a measure of the selected property of at least one of the one or more components of the fluid of interest using said temperature sensor; and

wherein said elevated temperature condition is selected to reduce the effect of at least one of the components in the fluid of interest on the selected property that is measured by the measuring means.

As can be seen, claim 5 recites, among other things, an energizing means, which is structure. The energizing means is expressed in functional terms, as authorized by 35 U.S.C. § 112, sixth paragraph. 35 U.S.C. § 112, sixth paragraph, authorizes “means or step plus function” limitations in a claim.

Claim 5 further recites that the energizing means is connected to the heater, and energizes the heater to induce an elevated temperature condition in said thermal sensor. Claim 5 further recites that the elevated temperature condition is selected to reduce the effect of at least one of the components in the fluid of interest on the selected property that is measured by the measuring means. Bohrer does not disclose or suggest such an energizing means. For these and other reasons, independent claim 5 and dependent claims 6-8 are all believed to recite sufficient structure, and are believed to be clearly patentable over Bohrer. For similar and other reasons,

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independent claim 15, and dependent claims 16-17 and 23-26 are also believed to be clearly patentable over Bohrer.

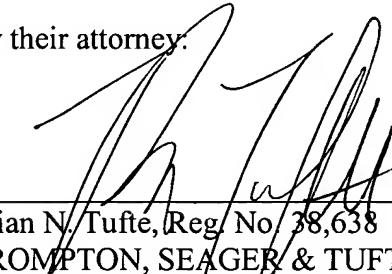
Applicant has added newly presented claims 27-34. These claims are also believed to be clearly patentable over the cited prior art.

In view of the foregoing, all pending claims 1-19, 22-23, and 25-34 are believed to be in condition for allowance. Reexamination and reconsideration are respectfully requested. If a telephone interview would be of assistance, please contact the undersigned attorney at 612-677-9050.

Respectfully Submitted,

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By their attorney:

  
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